

Risk Control

Fleet Safety: The Law and Safety Program Practices

The Law

As more businesses have put their employees behind the wheel, the law has developed to hold employers liable for the acts of their employees. This concept is extremely important for managers and fleet administrators because their decisions, policies and procedures can significantly affect the company bank account.

Negligence:

Most lawsuits involving fleet issues are based on the doctrine of negligence. Typically, an employee has a motor vehicle accident and the court finds the employee was negligent in causing the accident. Because the employee was working for you at the time, the court makes you pay the damages awarded to the injured person. In some cases you may be held liable for your own negligence in allowing the employee to drive at all. To understand these concepts, let's build the foundation for a negligence lawsuit, and then we will show you why you can be held liable for your employee's actions.

There are five elements in a negligence lawsuit:

1. Duty
2. Breach of duty,
3. Actual damages,
4. Direct cause, and
5. Proximate cause

Duty is a general term that describes what one person in society owes to another. Usually, this means that a person has an affirmative duty to use reasonable care in a given situation to prevent harm to others. A **breach of duty** occurs when a person does not use the care that an ordinary person would use under the same circumstances. When the breach of duty results in harm to another, they will usually suffer **damages** such as medical bills and loss of earning capacity. **Direct and proximate causes** are concerned with whether the breach of duty was the cause of the harm, and that such harm should have been foreseeable.

Vicarious Liability & Respondeat Superior: Once an employee has been found to have been negligent, an employer can be liable for the damages awarded under a theory called **vicarious liability**. Vicarious liability is most commonly recognized in agency situations where the employer is held liable for the negligent acts of the employee when the employee was acting within the scope of employment. In the employee and employer relationship, vicarious liability is called **respondeat superior**. In a respondeat superior lawsuit, it must be proven that the employee was acting within the scope of their employment and that they were legally negligent (5 elements discussed above).

The classic example is a person employed to drive a truck, who carelessly causes an accident while driving that truck. The driver's employer will be held liable for any damages caused by the employee's careless driving once the injured party proves the driver was careless, and that the driver was working for the trucking firm when the accident occurred.

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Negligent Hiring: As mentioned earlier, there are other forms of legal action in which an employer can be directly liable, as opposed to vicariously liable. One is called **negligent hiring**. This claim may arise when an employer is careless in the hiring, retention, or supervision of an employee and that employee causes injury to a third person. To succeed, the injured person must prove that the employer knew, or in the exercise of ordinary care should have known, that its employee would subject third parties to an unreasonable risk of harm. An example would be hiring someone to drive a truck without first checking to see that they are properly licensed by the State, and have the training and skill to handle the truck they are to drive. If that employee caused an accident with the truck because of their inexperience or lack of license, the employer likely would be liable to the injured person for negligence in the hiring of the driver.

There are primarily two differences between negligent hiring and respondeat superior claims. In negligent hiring (1) employers are held liable for their own conduct and (2) it is not necessary to prove that the employee was acting within the scope of their employment when they caused injury to others. The duty to exercise reasonable care in making decisions to hire a particular applicant includes the employer's obligation to conduct a reasonable investigation into the employee's work, experience, background, character, and qualifications.

Negligent Entrustment: Some courts have adopted another theory of liability called **negligent entrustment**. Negligent entrustment is when an employer supplies an employee with an instrument (this could be an automobile) knowing the employee to be likely, because of youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others. An employer's liability depends on whether, under the totality of circumstances surrounding the hiring, the employer exercised reasonable care. The employer has a duty to exercise reasonable care in determining whether an employee should be entrusted with a given instrument. In a case such as negligent entrustment, a thorough review of a driving record that indicated dangerous driving habits and consistent driving problems would be reason for an employer not to trust a prospective employee with an automobile.

Safety Program Practices

There are a number of things companies can do through a fleet safety program to help mitigate fleet liability potential. In terms of the various liabilities discussed in "The Law" section above:

- Ensure that your drivers are physically and medically capable of driving a vehicle safely. If there is an accident, the courts can hold employers liable for damage and injury, if a driver is found to be physically or medically unfit for driving. There is a presumption that employers must either have known or should have known of the employee's unfitness.
- Teach driver safety even to drivers who drive their own cars within the course or scope of employment. If there is an accident, employers can be held vicariously liable for damage and injury if it can be proven that the employee was careless in his/her driving.
- Do not entrust a vehicle to an employee who is likely to be inexperienced, due to youth, or otherwise use it in a manner to cause injury or damage. Employers could be found liable for negligent entrustment.
- If there is evidence that all requirements of vehicle inspection and maintenance aren't being met or if employees aren't following an employer's policies and procedures regarding vehicle maintenance, the employer could be held liable for negligent inspection and/or maintenance.

Fleet Safety Management best practices also can offer employers ways to address fleet liability and negligence issues. Start with written driver selection procedures and follow them consistently. Written job descriptions should identify needed driving skills and knowledge required. Minimum age requirements should be in place, along with written applications, reference checks, credit checks and criminal history checks.

It is important that employers exercise reasonable care in hiring the right person for the job. By simply conducting **reasonable** investigation into a prospective employee's work experience, background, character and qualifications,

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an employer has an advantage in protecting the company from potential fleet liability. Clear and simple policies and procedures need to be developed and implemented. Check motor vehicle records, employment history and references. If any of the above indicates problems, the employer shouldn't "entrust" the employee with a motor vehicle.

Other best practices include carrying out and documenting current motor vehicle record checks, physicals, drug and alcohol testing, a detailed interview process, and road tests for all drivers. Risk transfer methods such as requiring insurance certificates from drivers naming specific limits have been effective for companies.

A company also should have a written Inspection and Maintenance Program. Procedures **minimally** must meet manufacturer's recommendations. All inspections and maintenance must be documented. Drivers must be trained in pre-trip, en route and post trip inspections. Mechanics must be trained in preventive, unscheduled and periodic maintenance. Supervisors should perform audits to ensure employees understand their fleet safety roles and responsibilities. Audits should be documented. Controls for employee and/or non-owned vehicle use need to be the equivalent of a company's owned vehicle controls regarding inspection and maintenance.

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